

### §2613. Variances and exemptions

**1. Variances.** The commissioner may grant one or more variances from an applicable state primary drinking water regulation to a public water system if the variance will not result in an unreasonable risk to the public health and if:

A. Because of the characteristics of the raw water sources reasonably available to the systems, the system can not meet the maximum contaminant levels of the drinking water regulation despite application of the best technology, treatment techniques or other means; or [PL 1995, c. 622, §1 (AMD).]

B. Where a specified treatment technique for a contaminant is required by the state primary drinking water regulation, the system demonstrates to the commissioner's satisfaction that the treatment technique is not required to protect the public health because of the nature of the raw water source. [PL 1995, c. 622, §1 (AMD).]

Prior to granting a variance, the commissioner shall provide an opportunity for public hearing pursuant to the Maine Administrative Procedure Act on the proposed variance. Variances may be conditioned on monitoring, testing, analyzing or other requirements to ensure the protection of the public health; and variances granted under paragraph A must include a compliance schedule under which the public water system will meet each contaminant level for which a variance is granted as expeditiously as is feasible.

A variance may be issued to a system on the condition that the system install the best technology, treatment techniques or other means that are available, taking costs into consideration, according to the United States Environmental Protection Agency and based upon an evaluation satisfactory to the commissioner that indicates that alternative sources of water are not reasonably available to the system. [PL 1997, c. 705, §3 (AMD).]

**1-A. Small system variances.** The commissioner may grant a variance for compliance with a requirement specifying a maximum contaminant level or treatment technique contained in a state primary drinking water regulation to public water systems serving 3,300 or fewer persons. With the approval of the Administrator of the United States Environmental Protection Agency, the commissioner may grant a variance under this subsection to a public water system serving more than 3,300 persons but fewer than 10,000 persons.

The commissioner shall adopt rules for variances to be granted under this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[PL 1997, c. 705, §4 (NEW).]

**2. Exemptions.** The commissioner may grant one or more exemptions from an applicable state primary drinking water regulation to a public water system, if:

A. The exemption will not result in an unreasonable risk to the public health; [PL 1975, c. 751, §4 (NEW).]

B. The public water system is unable to comply with the regulation or to implement measures to develop an alternative source of water supply due to compelling factors, which may include economic factors such as qualification of the public water system serving a disadvantaged community. For purposes of this paragraph "disadvantaged community" means the service area of a public water system that meets affordability criteria established by the department after public review and comment; [PL 1997, c. 705, §5 (AMD).]

C. The public water system was in operation on the earliest effective date under present or prior law of the contaminant level or treatment technique requirement; and [PL 1997, c. 705, §5 (AMD).]

D. Management or restructuring changes can not reasonably be made that will result in compliance with this chapter or, if compliance can not be achieved, improve the quality of the drinking water. [PL 1997, c. 705, §5 (NEW).]

Prior to implementation of a schedule for compliance with contaminant level or treatment technique requirements and for implementation of control measures, the commissioner shall provide notice and opportunity for public hearing pursuant to the requirements of the Maine Administrative Procedure Act. Each exemption must also be conditioned on monitoring, testing, analyzing or other requirements to ensure the protection of the public health and must include a compliance schedule, including increments of progress or measures to develop an alternative source of water supply, under which the public water system will meet each contaminant level for which an exemption is granted as expeditiously as is feasible.

[PL 1997, c. 705, §5 (AMD).]

**3. Exemption for water distillers in retail stores.** A retail store that distills and bottles water from a public water system and sells the water on the premises is exempt from state water rules except:

A. The distiller must be inspected annually by the Department of Agriculture, Conservation and Forestry; and [PL 1991, c. 113 (NEW); PL 2011, c. 657, Pt. W, §5 (REV).]

B. A bacteriological sample of the distilled water must be submitted to the Department of Health and Human Services at least every 3 months. If the distiller has a one-year history of no coliform bacteria contamination, the Department of Health and Human Services may reduce the frequency of sampling to one sample per year. [PL 1991, c. 113 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

[PL 1991, c. 113 (NEW); PL 2003, c. 689, Pt. B, §6 (REV); PL 2011, c. 657, Pt. W, §5 (REV).]

**3-A. Exemption criteria.** An exemption described in subsection 2 may not be granted unless:

A. The public water system can not meet the standards without capital improvements that can not be completed within the period of the exemption; [PL 1997, c. 705, §6 (NEW).]

B. In the case of a public water system that needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance or assistance pursuant to the state revolving loan fund program or any other federal or state program that is reasonably likely to be available within the period of the exemption; or [PL 1997, c. 705, §6 (NEW).]

C. The public water system has entered into an enforceable agreement to become part of a regional public water system and the system is taking practicable steps to meet the standards. [PL 1997, c. 705, §6 (NEW).]

[PL 1997, c. 705, §6 (NEW).]

**4. Exemption; extended.** The exemption described in subsection 2 is effective for up to one year after the date of the issuance of the exemption.

A. The final date for compliance provided in any schedule in an exemption may be extended for a period not to exceed 3 years after the date of the issuance of the exemption. [PL 1997, c. 705, §7 (AMD).]

B. In the case of a system that does not serve more than 3,300 people and that needs financial assistance for the necessary improvements, an exemption granted may be renewed for one to 3 additional 2-year periods, but may not exceed a total of 6 additional years, if the system establishes that it is taking all practicable steps to meet the requirements established in the exemption. [PL 1997, c. 705, §7 (AMD).]

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A public water system may not receive an exemption under this section if the system was granted a variance under subsection 1-A. [PL 1997, c. 705, §8 (NEW).]

#### SECTION HISTORY

PL 1975, c. 751, §4 (NEW). PL 1979, c. 541, §§B28,29 (AMD). PL 1991, c. 113 (AMD). PL 1995, c. 622, §§1-3 (AMD). PL 1997, c. 705, §§3-8 (AMD). PL 2003, c. 689, §B6 (REV). PL 2011, c. 657, Pt. W, §5 (REV).

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